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Designing Work-based Learning that Complies with the Fair Labor Standards Act

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Agenda

- Work-based Learning Overview
- Understanding the Fair Labor Standards Act
 - Qualifications for legal paid & unpaid internships for youth and youth with disabilities
- Strategies and Tools

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Who We Are & What We Do

Institute for Educational Leadership (IEL)'s Center for Workforce Development

National Collaborative on Workforce and Disability for Youth (NCWD/Youth)

- Funded by Office of Disability Employment Policy (ODEP), U.S. Department of Labor
- National TA Center assists state & local workforce development systems to integrate youth with disabilities into their service strategies
- Partners: IEL; Institute on Community Integration, University of Minnesota; Boston University; PACER Center



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Guideposts for Success

Five Essential Components for All Youth:

- School-Based Preparatory Experiences
- Career Prep & Work-Based Learning
- Youth Development & Leadership
- Connecting Activities
- Family Involvement & Supports



<http://www.ncwd-youth.info/guideposts>

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Career Development Strategies
Guidepost Area 2

All Youth Need:

- Self-exploration activities to learn about their skills, interests & career options
- Career exploration activities including site visits, guest speakers, job shadowing; includes learning about education/training entry requirements & earning potential/benefits
- Opportunities to practice through work experiences i.e. internships, community service work, part-time jobs
- Soft skills training to gain job-seeking & workplace basic skills

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Career Development Strategies
Guidepost Area 2

In Addition, Youth with Disabilities Need:

- To understand benefits planning
- To learn to communicate their disability-related work support and accommodation needs
- To learn to find, formally request, & secure supports and accommodations

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What is Work-based Learning (WBL)?

- A supervised experience sponsored by an education or training organization that links knowledge gained at the worksite with a planned program of study
 - Experiences range in intensity, structure & scope
- **Types:** worksite visits, job shadowing, paid & unpaid internships, service/volunteer work, structured on-the-job training, formal apprenticeship or employment, entrepreneurship

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Purpose of WBL - Helping Youth Build & Practice Competencies

Design opportunities to build youth competencies including:

- Career readiness skills – soft skills & technical skills appropriate to own career goals
- Understanding oneself - how own skills, attributes, values, & interests match up with different career options
- Awareness of various career options

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Purpose of WBL - Helping Youth Build & Practice Competencies

Design opportunities to build youth competencies including:

- Understanding required credentials/skills/experiences and career pathways to pursue careers of interests
- Job seeking skills
- Ownership for own career development – actively explores options, set goals, and creates career plans

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WBL- Internships for Youth

- An internship is one form of work-based learning that the Workforce Innovation and Opportunity Act of 2014 (WIOA) emphasizes for career development
- WIOA requires that youth with disabilities receive extensive pre-employment transition services, such as internships, to obtain and retain competitive integrated employment (DOL, 2014; Federal Register, 2015)

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Understanding the Fair Labor Standards Act (FLSA)

- “The FLSA establishes minimum wage, overtime pay, recordkeeping, and **youth employment standards in the private sector and in Federal, State, and local governments**” (DOL, n.d.)
- FLSA clarifies what makes an internship legal and acceptable
 - Paid vs. Unpaid
 - Type of workplace

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Legal Paid and Unpaid Internships

Paid internships are legal if...

- Youth are paid at least minimum wage
 - Federal or state rate, whichever is higher

Unpaid internships are legal if...

- Youth work for a public or governmental agency OR
- Youth volunteer their time freely and without anticipation of compensation for religious, charitable, civic, or humanitarian purposes to a non-profit organization OR
- Youth work in for-profit sector **AND all criteria are met**

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**Legal Unpaid Internships
in the For-Profit Sector**

Must meet the following 6 criteria

- 1. The internship is similar to training that would be given in an educational environment
- 2. The internship experience is for the benefit of the intern
- 3. The intern does not displace regular employees, but works under close supervision of existing staff

(DOL, 2010; Prue, 2015)

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**Legal Unpaid Internships
in the For-Profit Sector Continued**

- 4. The employer derives no immediate advantage from the activities of the intern, and on occasion its operations may actually be impeded
- 5. The intern is not necessarily entitled to a job at the conclusion of the internship; AND
- 6. The employer and the intern understand that the intern is not entitled to wages for the time spent in the internship

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Legal Unpaid Internships for Youth with Disabilities in the For-Profit Sector

To Qualify as Youth with Disabilities:

- Must have physical and/or mental disabilities;
- Competitive employment at or above the minimum wage level is not immediately obtainable; AND
- On account of disability, youth will need intensive ongoing support to perform in a work setting

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Legal Unpaid Internships for Youth with Disabilities in the For-Profit Sector

Participation is for...

- Vocational exploration, assessment or training;
- In a community-based work site; AND
- Under the general supervision of rehabilitation organization personnel, or in the case of a student with a disability, public school personnel

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Legal Unpaid Internships for Youth with Disabilities in the For-Profit Sector

Community-based placements must be...

- Clearly defined components of individual rehabilitation programs
- Developed and designed for the benefit of each individual

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Legal Unpaid Internships for Youth with Disabilities in the For-Profit Sector

Students with disabilities shall have...

- Individualized Education Program (IEP) that
 - Lists needed transition services
 - For the exploration, assessment, training, or cooperative vocational education components

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Legal Unpaid Internships for Youth with Disabilities in the For-Profit Sector

Individuals in a community-based rehabilitation program must have...

- Individual Plan for Employment (IPE)
 - Includes a statement of needed transition services
 - For exploration, assessment, or training components

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Legal Unpaid Internships for Youth with Disabilities in the For-Profit Sector

Specific Regulations for Youth with Disabilities:

- Wage & Hour can request documentation that demonstrates that the youth is
 - Enrolled in community-based placement
 - Enrollment is voluntary
 - No expectation of being paid
- Activities of youth at community-based placement site do not result in an immediate advantage to the business

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Legal Unpaid Internships for Youth with Disabilities in the For-Profit Sector

General Rule: Employment relationship is presumed not to exist when each of the three components does not exceed the following limitations*:

- Vocational explorations - 5 hrs per job experienced
- Vocational assessment - 90 hrs per job experienced
- Vocational training - 120 hrs per job experienced

* In the case of students, these limitation apply during any one school year

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Legal Unpaid Internships for Youth with Disabilities in the For-Profit Sector

Specific Regulations for Youth with Disabilities:

- Individuals are not entitled to employment at the business at the conclusion of the IEP or IPE
 - If an individual becomes an employee, they cannot be considered a trainee at that particular community-based placement unless in a different, clearly distinguishable occupation

(DEP'T OF LABOR, WAGE & HOUR DIV., FIELD OPERATIONS HANDBOOK § 64C08, 2013)

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Specific State Laws and Regulations

- Some states have additional laws and regulations
 - New York has 5 additional laws and regulations
 - California requires that interns receive college credit



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Work-based Learning Strategies & Tools You Can Use

**Engaging Youth in Work Experiences:
An Innovative Strategies Practice Brief**

- Features strategies from 10 successful programs nationwide
- Describes how they implement strategies and what tools they use

<http://www.ncwd-youth.info/innovative-strategies/practice-briefs/engaging-youth-in-work-experiences>

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Innovative Strategies – Common Practices of Successful Programs

- 1. Provide youth with soft skills training and guidance
- 2. Train youth in technical skills, or hard skills, as needed for specific work experience setting
- 3. Devote significant time to developing and maintaining relationships with employers
- 4. Clearly communicate what is expected of employers, youth, and families upfront
- 5. Carefully match youth to opportunities based on individual interests and skills
- 6. Provide on-going support to youth and employers throughout the work experience

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More WBL Resources

Work-based Learning Jumpstart: <http://www.ncwd-youth.info/work-based-learning>
Ch. 3 in High School High Tech Program Guide: <http://www.ncwd-youth.info/hsht/program-guide>
Guide to Internships for Students with Disabilities: <http://nclde-youth.info/Downloads/intern-guide-final.pdf>
Individualized Learning Plans How-to Guide, Section on Work-based Learning: <http://www.ncwd-youth.info/ilp/how-to-guide>

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Soft Skills Training Resources

- ODEP’s Skills to Pay the Bills: Mastering Soft Skills for Workplace Success curriculum, <http://www.dol.gov/odep/topics/youth/softskills/>
- Resources for Families:
- Helping Youth Develop Soft Skills for Job Success: Tips for Parents and Families InfoBrief, <http://www.ncwd-youth.info/information-brief-28>
- Soft Skills Podcast series, <http://www.ncwd-youth.info/podcast/helping-youth-develop-soft-skills-for-job-success>

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Employer Engagement Resources

- **Work-based Learning Jumpstart – Employer Audience**, <http://www.ncwd-youth.info/work-based-learning/employer>
- **Strategies for Youth Workforce Programs to Become Employer-Friendly Intermediaries**, <http://www.ncwd-youth.info/information-brief-12>

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Disclosure and Accommodations

- **Disclosure**—youth should decide when and how much to tell others, and understand how their disability affects their capacity to learn and/or perform effectively; they should also be “aware”...
- **Accommodations**—youth should be empowered to determine what environmental adjustments, supports, and services they need in order to access, participate and excel in school, at work, and in the community.

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Disability Disclosure Resources

- **The 411 on Disability Disclosure: A Workbook for Youth with Disabilities**, <http://www.ncwd-youth.info/411-on-disability-disclosure>
- **The 411 on Disability Disclosure: A Workbook for Families, Educators, Youth Service Professionals, and Adult Allies Who Care About Youth with Disabilities**, <http://www.ncwd-youth.info/411-on-disability-disclosure-for-adults>
- **Cyber Disclosure for Youth with Disabilities**, <http://www.ncwd-youth.info/cyber-disclosure>
- **Disability Disclosure Videos**, <http://www.ncwd-youth.info/videos>

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Accommodations Resources

- The Job Accommodation Network (JAN), <http://askjan.org/>
- JAN's Searchable Online Accommodation Resource, <http://askjan.org/soar/>
- Entering the World of Work: What Youth with Mental Health Needs Should Know About Accommodations, ODEP, <http://www.dol.gov/odep/pubs/fact/transitioning.htm>

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For More Information

- National Collaborative on Workforce and Disability for Youth: www.ncwd-youth.info
- Department of Labor's Office of Disability Employment Policy: www.dol.gov/odep
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